

REMARKS

In the action of March 4, 2009, the objected to claim 8; rejected claims 1-4, 6, and 9-10 under 35 U.S.C. § 102 as anticipated by Kimura; and rejected claims 5 and 8 under 35 U.S.C. § 103 as unpatentable over Kimura in view of Shavit.

Applicant has cancelled independent claim 1 and amended independent claim 6 to define the invention over the references newly applied by the examiner. In particular, applicant has amended the structure of the wing portions of the flexible container. The wing portions terminate approximately in the plane of the top edge of the spout element. They extend to a central portion of the top end of the container, from which a spout extends. The wing portions are arranged so that they include open sections which are in fluid communication with the interior of the container and which extend from opposing side edges of the container inwardly toward the central portion a small distance compared to the overall width of the container. The remainder of the wing portions are sealed.

This particular wing portion arrangement permits the gussets connecting the front and rear panels of the container to fully expand, allowing a maximum amount of fluid into the container, while still permitting the container to be substantially flat when empty. This arrangement is distinguished from Kimura and Shavit. In particular, the claimed side wing portions are different than Shavit. Note that the side portions of Shavit are sealed from the side edges of the container a short distance inwardly, and then are open over the remainder thereof. This is the opposite of applicant's structure, and would have absolutely no benefit or purpose relative to permitting gusset structures to fully expand. In fact, it would inhibit a gusset structure from fully expanding, resulting in incomplete filling of the gusseted container. With applicant's structure, the unfilled container is flat and then expands to a full capacity when fluid is introduced. Accordingly, with such a specific difference in structure and resulting difference in function and capability, applicant's amended claim 6 is patentable over the combination of Kimura and Shavit. Since claims 3, 9 and 11 are dependent upon claim 6, those claims are also allowable.

The Commissioner is authorized to charge any deficiency or credit any over payment to Deposit Account _____.

Respectfully submitted,
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